

**Remarks**

This Amendment is in response to the Office Action dated **October 5, 2006**. The Office Action: **1)** rejected claims 1-4 under 35 USC §112 ¶ 2 for being indefinite, **2)** rejected claims 1 and 3 under 35 USC §102(b) as being anticipated by US 4,491,918 (hereinafter Yuki), **3)** rejected claim 2 under 35 USC §103(a) as being unpatentable over Yuki in view of US 4,942,529 (hereinafter Ishikawa), **4)** rejected claim 4 under 35 USC §103(a) as being unpatentable over Yuki in view of US 5,947,516 (hereinafter Avitan), and **5)** the Examiner indicated he had not considered a German language reference cited in an IDS . The following comments are presented in the same order as in the Office Action with section numbers corresponding to the above enumeration.

**1. 35 USC § 112 ¶ 2 rejection of claims 1-4**

The Office Action rejected claims 1-4 under 35 USC §112 ¶ 2 for being indefinite. Specifically the Office Action stated that the claims failed to distinctly claim the inventive subject matter because: a) the term “horizontal line” lacked antecedent basis, b) how the operating members, the regulation device, and the drives interrelate was unclear, c) an “it” in the claims could not be definitively understood, and d) use of the term “preferably” rendered the claims non-specific. The instant claims have been amended to conform to English grammar and US patent practice.

**2. 35 USC § 102(b) rejection of claims 1 and 3 under Yuki**

The Office Action rejected claims 1 and 3 under 35 USC §102(b) as being anticipated by Yuki. Yuki however does not describe all of the limitations recited in claims 1 and

3. Claims 1 and 3 recite an analog sensor which measures the inclined position of the load-carrying fork to a horizontal axis. Yuki neither describes such a sensor nor makes any reference to objectively measuring the actual incline of the load carrying fork. Yuki instead merely changes the incline of the mast supporting the load-carrying fork according to pre-determined increments. In short Yuki measures the angle of the mast relative to the main body of the truck and *uses that angle as a substitute for the true angle of the load carrying fork* while *Applicant's device actually measures the true angle of the load carrying fork*.

The difference between these two calculations is significant. In cases such as where the mast becomes bent by the load, where the tires become deformedly crushed by the load, where the ground is uneven, or in any non-anticipated circumstance in which the true change in angle needed to set the forks in their desired angle differs from the pre-determined anticipated values, Yuki will not adjust the load exactly into the desired position. In contrast Applicant's fork lift truck will perform the proper adjustment because the sensor provides the actuation drives the exact data needed for the adjustment. By not determining the exact adjustment needed for non-anticipated inclines, the disclosure of Yuki teaches a device which may have the load becoming improperly placed on the forks and/or the load not remaining on the forks.

Because Yuki does not describe all of the limitations in claims 1 and 3 the 35 USC §102 (b) rejection was in error. Notice to this effect would be appreciated.

**3. 35 USC § 103(a) rejection of claims 1 and 3 under Yuki**

The Office Action rejected claim 2 under 35 USC §103(a) as being anticipated by Yuki in view of Ishikawa. As mentioned in section 2 of these remarks, Yuki does not disclose an analog sensor which compares the inclined position of the load-carrying fork to a horizontal axis.

Similarly Ishikawa also does not make such a disclosure. Because neither of the cited references whether viewed individually or in combination disclose all of the claimed limitations, the 35 USC §103(a) rejection was in error.

**4. 35 USC § 103(a) rejection of claims 1 and 3 under Yuki**

The Office Action rejected claim 4 under 35 USC §103(a) as being anticipated by Yuki in view of Avitan. As mentioned in section 2 of these remarks, Yuki does not disclose an analog sensor which compares the inclined position to a horizontal axis. Similarly Avitan also does not make such a disclosure. Because neither of the cited references whether viewed individually or in combination disclose all of the claimed limitations, the 35 USC §103(a) rejection was in error.

**5. German Reference**

The Examiner indicated that the German reference cited in our IDS was not considered, as it is in German. As applicant pointed out in the IDS, this reference, DE 3211509, is discussed in the specification (at page 2), which provides the required statement of relevancy. Therefore, this reference should be considered.

**Conclusion**

Based on at least the foregoing remarks, Applicant respectfully submits this application is in condition for allowance. For at least these reasons, withdrawal of the rejections against Claims 1-4 is requested. Favorable consideration and prompt allowance of claims 1-6 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

A handwritten signature in black ink, appearing to read "Richard Arrett", with a long horizontal stroke extending to the right.

Date: January 5, 2007

By: \_\_\_\_\_

Richard A. Arrett

Registration No.: 33153

6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001

f:\wpwork\bec\11473us01\_amd\_20061220.doc